REMARKS

Claims 1-49 are currently pending in the subject application, and are presently under consideration. Claims 1-49 are rejected. Claims 1-15, 17, 19-24, 26-40 and 42-49 have been amended. Favorable reconsideration of the application is requested in view of the amendments and comments herein.

I. Objections to Claims 2-7, 15-17, 23-24, 19-20, 44-45 and 48 and Rejection of Claims 1-49 Under 35 U.S.C. §112, Second Paragraph

Claims 2-7, 15-17, 23-24, 19-20, 44-45 and 48 have been objected to and claims 1-49 stand rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention for similar reasons. Claims 1-15, 17, 19-24, 26-40 and 42-49 have been amended to correct various informalities. Applicant's representative respectfully submits that the claims, as amended comply with 35 U.S.C. §112, Second paragraph, and are not objectionable. Accordingly, withdrawal of this objection and rejection is respectfully requested.

II. Rejection of Claims 1-2, 4-9, 19-20, 22-27, 29-34, 44-45 and 47-49 Under 35 U.S.C. §102(b)

Claims 1-2, 4-9, 19-20, 22-27, 29-34, 44-45 and 47-49 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 4,109,311 to Blum, *et al.* ("Blum"). Withdrawal of this rejection is respectfully requested for at least the following reasons.

Claims 1 and 26 have been amended to recite (means for, as recited in claim 26) assigning a sequence of time intervals to each software package of a plurality of software packages. Claims 1 and 26 have also been amended to clarify that each respective software packages in a subset of the plurality of software packages is executed during predetermined time intervals defined by the sequence of time intervals assigned to the respective software package. That is, claims 1 and 26 have been amended to clarify that multiple sequences of time are assigned to each software package of a plurality of software packages, and that a subset of the

plurality of software packages are executed during predetermined time intervals defined by the assigned sequences of time. Blum does not disclose this concept. Instead, Blum discloses that allocating time slices to a processing unit can be done two different ways (See Blum, Col. 3, Lines 47-56). In Blum, machine time (time slices) can be divided equally among different programs or assigned dynamically such that a program with a highest priority or a program with the greatest amount of processing time is allocated a greater number of time slices than lower priority programs or programs requiring less processing time (See Blum, Col. 3, Lines 47-53). Moreover, Blum also discloses that if one or two programs are not required for a period of time, computing time (the time slices) can be allocated among the remaining programs (See Blum, Col. 5, Lines 15-19.).

Nothing in Blum discloses that a sequence of time intervals are <u>assigned</u> to each software package of a plurality of software packages, and that a subset of the plurality of software packages are executed during <u>predetermined</u> time intervals defined by the assigned sequences of time, in contrast to claims 1 and 26. Instead, it appears in Blum, programs to be executed are selected "on the fly" (e.g., in real time) before a time slice (e.g., a time interval) based on the needs to the computer programs at the time of the selection. Thus, Blum does not disclose (means for, as recited in claim 26) assigning a sequence of time intervals to each software package of a plurality of software packages, or (means for) executing a subset of a plurality of software packages, as recited in amended claims 1 and 26. Accordingly, Blum does not anticipate amended claims 1 and 26. Therefore, amended claims 1 and 26, as well as claims 2, 4-9, 19-20, 22-27, 29, 34, 44-45 and 47-49 should be patentable over the cited art.

For the reasons described above, claims 1-2, 4-9, 19-20, 22-27, 29-34, 44-45 and 47-49 should be patentable over the cited art. Accordingly, withdrawal of this rejection is respectfully requested.

III.   Rejection of Claims 3 and 28 Under 35 U.S.C. §103(a)

Claims 3 and 28 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Blum in view of U.S. Patent No. 5,493,649 to Slivka, *et al.* ("Slivka"). Claims 3 and 8 depend from amended claims 1 and 26, respectively, and are patentable for at least the same reasons as amended claims 1 and 26, and for the specific elements recited therein. Moreover, in rejecting claims 3 and 28, the Examiner cites Slivka solely for Slivka's disclosure of a checksum test (See Office Action, Page 10, citing Col. 1, Lines 56-67 of Slivka). However, the addition of Slivka does not make up for the aforementioned deficiencies of Blum with respect to claims 1 and 26, from which claims 3 and 28 depend. Accordingly, claims 3 and 28 should be patentable over the cited art and withdrawal of this rejection is respectfully requested.

IV.   Rejection of Claims 10-11 and 35-36 Under 35 U.S.C. §103(a)

Claims 10-11 and 35-36 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Blum in view of U.S. Publication No. 2005/0132375 to Douceur, *et al.* ("Douceur"). Claims 10-11 and 35-36 depend from claims 1 and 26, and are patentable for at least the same reasons as amended claims 1 and 26, and for the specific elements recited therein. Moreover, in rejecting claims 10-11 and 35-36, the Examiner cites Douceur solely for Douceur's disclosure of background and foreground processes (See Office Action, Page 11, citing Par. [0005] of Douceur). However, the addition of Douceur does not make up for the aforementioned deficiencies of Blum with respect to claims 1 and 26, from which claims 10-11 and 35-36 depend. Accordingly, claims 10-11 and 35-36 should be patentable over the cited art and withdrawal of this rejection is respectfully requested.

V.   Rejection of Claims 13-17 and 38-42 Under 35 U.S.C. §103(a)

Claims 13-17 and 38-42 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Blum in view of U.S. Patent No. 5,621,663 to Skagerling ("Skagerling"). Claims 13-17 and 38-42 depend from claims 1 and 26, and are patentable for at least the same reasons as amended claims 1 and 26, and for the specific elements recited therein. Moreover, in rejecting claims 13-

17 and 38-42, the Examiner cites Skagerling solely for Skagerling's disclosure of a log file (See Office Action, Page 12, citing Col. 4, Lines 54-57 of Skagerling). However, the addition of Skagerling does not make up for the aforementioned deficiencies of Blum with respect to claims 1 and 26, from which claims 13-17 and 38-42 depend. Accordingly, claims 13-17 and 38-42 should be patentable over the cited art and withdrawal of this rejection is respectfully requested.

VI.   Rejection of Claims 18 and 43 Under 35 U.S.C. §103(a)

Claims 18 and 43 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Blum in view of Herbert, *et al.* ("Herbert"). Claims 18 and 43 depend from amended claims 1 and 26, respectively, and are patentable for at least the same reasons as amended claims 1 and 26, and for the specific elements recited therein. Moreover, in rejecting claims 18 and 43, the Examiner cites Herbert solely for Herbert's disclosure of an isolated execution ring (See Office Action, Page 14, citing Pars. [0021], [0025] and [0041] of Herbert). However, the addition of Herbert does not make up for the aforementioned deficiencies of Blum with respect to claims 1 and 26, from which claims 18 and 43 depend. Accordingly, claims 18 and 43 should be patentable over the cited art and withdrawal of this rejection is respectfully requested.

VII.   Rejection of Claims 21 and 46 Under 35 U.S.C. §103(a)

Claims 21 and 46 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Blum in view of U.S. Patent No. 6,438,704 to Harris ("Harris"). Withdrawal of this rejection is respectfully requested for at least the following reasons.

Claims 21 and 46 depend from amended claims 1 and 26 and have been amended to recite an executive software package that enforces a discipline that each respective software packages in the subset of the plurality of software packages is executed only during time intervals defined by a sequence of time intervals assigned to the respective software package in the subset of the plurality of software packages. In amended claims 21 and 46, the executive software package determines when the execution of any one of the respective software packages in the subset of the plurality of software packages extends into a time interval defined by the

sequence of time intervals assigned to at least one different software package in the subset of the plurality of software packages. In rejecting claims 21 and 26, the Examiner admits that Blum fails to disclose that execution of a software package extends into a time interval assigned to another software package, but contends that the teachings of Harris make up for the deficiencies of Blum (See Office Action, Page 15). Applicant's representative respectfully disagrees. As noted above with respect to claim 1, Blum assigns time slices to programs in real time. That is, in Blum, a particular time slice is not associated with a program until after that program has been selected to be executed in the particular time slice, which selection occurs immediately prior to the execution (See e.g., Blum, Col. 4, Lines 40-56). Since in Blum, programs are selected to be executed in real time, there is never a time that a program is being executed in a time slice that is associated with a different program.

A claim is not obvious where a suggested combination of references would require a substantial redesign and reconstruction of the elements shown in the prior art as well as a change in the basic principle under which the prior art was designed to operate. *In re Ratti*, 270 F.2d 810, 813, 123 U.S.P.Q. 349 (C.C.P.A. 1959). To modify Blum in such a manner that would make claims 21 and 46 obvious would require the inclusion of additional overhead systems that would have to assign particular time slices (e.g., sequence of time intervals) to programs (e.g., software packages) well before the duration of the time slice. Applicant's representative respectfully submits that the inclusion of such additional overhead would constitute a substantial redesign and reconstruction of Blum. Moreover, Applicant's representative respectfully submits that the purported modifications to Blum would change a basic principle of operation of Blum since the purported combination and modification would require that Blum not select programs to execute in time slices in real time, which appears to be a basic principle of operation of Blum. Accordingly Applicant's representative respectfully submits that combining and modifying Blum with any other reference (including Harris) in a manner that would make claims 21 and 46 obvious would both (1) require a substantial redesign and reconstruction of Blum that would (2) change a basic principle of operation in Blum. Accordingly, Blum taken in view Harris does not

make claims 21 and 46 obvious, and claims 21 and 46 should be patentable over the cited art. Thus, withdrawal of this rejection is respectfully requested.

VIII.   Rejection of Claims 12 and 37 Under 35 U.S.C. §103(a)

Claims 12 and 37 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Blum and Douceur in view of U.S. Patent No. 5,826,092 to Flannery ("Flannery"). Claims 12 and 37 depend from amended claims 1 and 26, respectively, and are patentable for at least the same reasons as amended claims 1 and 26, and for the specific elements recited therein. Moreover, in rejecting claims 12 and 37, the Examiner cites Flannery solely for Flannery's disclosure of a program that conserves power (See Office Action, Page 16, citing Col. 3., Lines 51-58 of Flannery). However, the addition of Flannery does not make up for the aforementioned deficiencies of Blum with respect to claims 1 and 26, from which claims 12 and 37 depend. Accordingly, claims 12 and 37 should be patentable over the cited art and withdrawal of this rejection is respectfully requested.

CONCLUSION

In view of the foregoing remarks, Applicant respectfully submits that the present application is in condition for allowance. Applicant respectfully requests reconsideration of this application and that the application be passed to issue.

Please charge any deficiency or credit any overpayment in the fees for this amendment to our Deposit Account No. 20-0090.

Respectfully submitted,

Date 1 April 2009   /Christopher P. Harris/

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